

National Counterintelligence Center

§ 1800.41

§ 1800.33 Allocation of resources; agreed extensions of time.

(a) *In general.* NACIC components shall devote such personnel and other resources to the responsibilities imposed by the Freedom of Information Act as may be appropriate and reasonable considering:

(1) The totality of resources available to the component,

(2) The business demands imposed on the component by the Director of NACIC or otherwise by law,

(3) The information review and release demands imposed by the Congress or other governmental authority, and

(4) The rights of all members of the public under the various information review and disclosure laws.

(b) *Discharge of FOIA responsibilities.* Components shall exercise due diligence in their responsibilities under the FOIA and must allocate a reasonable level of resources to requests under the Act in a strictly “first-in, first-out” basis and utilizing two or more processing queues to ensure that smaller as well as larger (i.e., project) cases receive equitable attention. The Information and Privacy Coordinator is responsible for management of the NACIC-wide program defined by this part and for establishing priorities for cases consistent with established law. The Director, NACIC shall provide policy and resource direction as necessary and render decisions on administrative appeals.

(c) *Requests for extension of time.* When NACIC is unable to meet the statutory time requirements of the FOIA, it will inform the requester that the request cannot be processed within the statutory time limits, provide an opportunity for the requester to limit the scope of the request so that it can be processed within the statutory time limits, or arrange with the requester an agreed upon time frame for processing the request, or determine that exceptional circumstances mandate additional time in accordance with the definition of “exceptional circumstances” per section 552(a)(6)(C) of the Freedom of Information Act, as amended, effective October 2, 1997. In such instances NACIC will, however, inform a requester of his or her right to decline our request and proceed with

an administrative appeal or judicial review as appropriate.

§ 1800.34 Requests for expedited processing.

(a) *In general.* All requests will be handled in the order received on a strictly “first-in, first-out” basis. Exceptions to this section will only be made in accordance with the following procedures. In all circumstances, however, and consistent with established judicial precedent, requests more properly the scope of requests under the Federal Rules of Civil or Criminal Procedure (or other federal, state, or foreign judicial or quasi-judicial rules) will not be granted expedited processing under this or related (e.g., Privacy Act) provisions unless expressly ordered by a federal court of competent jurisdiction.

(b) *Procedure.* Requests for expedited processing will be approved only when a compelling need is established to the satisfaction of NACIC. A requester may make such a request with a certification of “compelling need” and, within ten (10) days of receipt, NACIC will decide whether to grant expedited processing and will notify the requester of its decision. The certification shall set forth with specificity the relevant facts upon which the requester relies and it appears to NACIC that substantive records relevant to the stated needs may exist and be deemed releasable. A “compelling need” is deemed to exist:

(1) When the matter involves an imminent threat to the life or physical safety of an individual; or

(2) When the request is made by a person primarily engaged in disseminating information and the information is relevant to a subject of public urgency concerning an actual or alleged Federal government activity.

Subpart E—NACIC Action On FOIA Administrative Appeals

§ 1800.41 Appeal authority.

The Director, NACIC will make final NACIC decisions from appeals of initial adverse decisions under the Freedom of Information Act and such other information release decisions made under parts 1801, 1802, and 1803 of this chapter. Matters decided by the Director,

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NACIC will be deemed a final decision by NACIC.

§ 1800.42 Right of appeal and appeal procedures.

(a) *Right of Appeal.* A right of administrative appeal exists whenever access to any requested record or any portion thereof is denied, no records are located in response to a request, or a request for a fee waiver is denied. NACIC will apprise all requesters in writing of their right to appeal such decisions to the Director, NACIC through the Coordinator.

(b) *Requirements as to time and form.* Appeals of decisions must be received by the Coordinator within forty-five (45) days of the date of NACIC's initial decision. NACIC may, for good cause and as a matter of administrative discretion, permit an additional thirty (30) days for the submission of an appeal. All appeals shall be in writing and addressed as specified in §1800.3. All appeals must identify the documents or portions of documents at issue with specificity and may present such information, data, and argument in support as the requester may desire.

(c) *Exceptions.* No appeal shall be accepted if the requester has outstanding fees for information services at this or another federal agency. In addition, no appeal shall be accepted if the information in question has been the subject of a review within the previous two (2) years or is the subject of pending litigation in the federal courts.

(d) *Receipt, recording, and tasking.* NACIC shall promptly record each request received under this part, acknowledge receipt to the requester in writing, and thereafter effect the necessary taskings to the office(s) which originated or has an interest in the record(s) subject to the appeal.

(e) *Time for response.* NACIC shall attempt to complete action on an appeal within twenty (20) days of the date of receipt. The volume of requests, however, may require that NACIC request additional time from the requester pursuant to §1800.33. In such event, NACIC will inform the requester of the right to judicial review.

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§ 1800.43 Determination(s) by Office Chief(s).

Each Office Chief in charge of an office which originated or has an interest in any of the records subject to the appeal, or designee, is a required party to any appeal; other interested parties may become involved through the request of the Coordinator when it is determined that some or all of the information is also within their official cognizance. These parties shall respond in writing to the Coordinator with a finding as to the exempt status of the information. This response shall be provided expeditiously on a "first-in, first-out" basis taking into account the business requirements of the parties and consistent with the information rights of members of the general public under the various information review and release laws.

§ 1800.44 Action by appeals authority.

(a) *Preparation of docket.* The Coordinator shall provide a summation memorandum for consideration of the Director, NACIC; the complete record of the request consisting of the request, the document(s) (sanitized and full text) at issue, and the findings of concerned Office Chiefs or designee(s).

(b) *Decision by the Director, NACIC.* The Director, NACIC shall personally decide each case; no personal appearances shall be permitted without the express permission of the Director, NACIC.

§ 1800.45 Notification of decision and right of judicial review.

The Coordinator shall promptly prepare and communicate the decision of the Director, NACIC to the requester. With respect to any decision to deny information, that correspondence shall state the reasons for the decision, identify the officer responsible, and include a notice of a right to judicial review.

PART 1801—PUBLIC RIGHTS UNDER THE PRIVACY ACT OF 1974

Subpart A—General

Sec.

1801.1 Authority and purpose.

1801.2 Definitions.